

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1282 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NARENDRASINH SAJJANSINH SOLANKI

Versus

STATE OF GUJARAT

Appearance:

MR MUKESH R SHAH for Petitioner

MR LR PUJARI, APP for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 20/04/98

ORAL JUDGEMENT

Heard learned advocate Mr.M.R.Shah appearing for the petitioner.

2. Rule. Learned APP, Mr.Pujari waives service of Rule on behalf of respondent-State.

3. The petitioner was earlier enlarged on bail by the competent Court in connection with C.R.No.33/88

registered at Sahera Police Station. That thereafter charge has been framed and the case has been numbered as Criminal Case No.949/89. It is the case of the petitioner that on account of sickness of his father, he could not remain present on the notified date of hearing of Criminal Case No.949/89 on 3.2.98, and therefore the non bailable warrant was issued by the trial Court, pursuant to which the petitioner has been arrested and is in judicial custody. The petitioner thereafter made application Ex.43 before the Chief Judicial Magistrate, Godhra, for releasing him on bail, but vide order dated 7.4.98, the said application of the petitioner was rejected. The petitioner therefore preferred Misc.Criminal Application No.245/98 before the learned Sessions Judge, Panchmahals at Godhra u/s.439 for releasing him on bail, who by his order dated 15.4.98, rejected the same. That there is another case, being Criminal Case No.1706/96 pending against the petitioner and the same was also posted for hearing on the same date i.e.3.2.98, and in that case also the learned Chief Judicial Magistrate, Godhra, had issued non bailable warrant as the petitioner did not remain present in the aforesaid case. The petitioner therefore preferred an application for releasing him on bail before the Chief Judicial Magistrate, Godhra, which came to be dismissed by the learned Judge on 7.4.98 and therefore the petitioner preferred Misc.Criminal Application No.246/98 before the Addl. Sessions Judge, Panchmahals at Godhra. That vide order dated 15.4.98, the learned Addl. Sessions Judge, Panchmahals, has allowed this application No.246/98.

4. It is the case of the petitioner that on the same day, there were two bail applications being Cr.Misc.Applications No.245/98 and 246/98 before the learned Addl.Sessions Judge, Panchmahals, Godhra, in respect to two criminal cases, but the learned judge has rejected the bail application bearing Cr.Misc.Application No.245/98 and has granted the Cr.Misc.Application No.246/98 and has ordered to enlarge the petitioner on bail for the sum of Rs.15,000/- and on furnishing two sureties each of Rs.7,500/- to the satisfaction of the trial Court.

5. I have gone through the impugned orders of the learned Addl.Sessions Judge produced on record vide running page No.12 to 20. It is true that the present petitioner has committed default by remaining absent on the notified date of the case time and again. However, it is difficult to comprehend as to how bail could be granted in one case, and could be rejected in another

case, for the same reason, when both the cases were notified on the same date. In overall consideration of the facts and circumstances apparent from the record, it would not be unjust and improper if the petitioner is enlarged on bail on the same terms and conditions in Criminal Misc.Application No.245/98 on which the learned Addl. Sessions Judge, Panchmahals, Godhra, has granted bail to the petitioner in Criminal Misc.Application No.246/98.

6. In the result, this Criminal Misc.Application is allowed. The petitioner is admitted to bail, in respect to Criminal Case No.949/89, on furnishing a bond for the amount of Rs.15,000/- (Rupees Fifteen Thousand Only) and two sureties of Rs.7,500/- each, to the satisfaction of the trial Court. The petitioner shall give an undertaking before the trial Court that henceforth, he shall invariably remain present on every date notified by the trial Court in both the cases.

7. Rule is made absolute accordingly. No order as to costs.

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(sunil)